

**Chesapeake Bay Local Assistance Board
Monday, December 13, 2004
The Heritage Center
Pocahontas State Park
Chesterfield, Virginia**

Chesapeake Bay Local Assistance Board Members Present

Donald W. Davis, Chair
David C. Froggatt, Jr.
Gale A. Roberts

David L. Bulova
Beverly D. Harper

Chesapeake Bay Local Assistance Board Members Not Present

William E. Duncanson
Michael V. Rodriguez

Sue H. Fitz-Hugh
Walter J. Sheffield

Staff

Joseph H. Maroon, Director
C. Scott Crafton, Acting Director, Division of Chesapeake Bay Local Assistance
Martha Little, Chief of Environmental Planning
Shawn Smith, Principal Environmental Planner
Ryan Link, Principal Environmental Planner
Heather C. A. Mackey, Principal Environmental Planner
Beth Ballard, Senior Environmental Planner
Brad Belo, Senior Environmental Planner
Nancy Miller, Senior Environmental Planner
Michael R. Fletcher, Director of Development

Others

Roger Chaffe, Office of the Attorney General
Brian Ballard, City of Norfolk
Lee Rosenberg, City of Norfolk
Leonard Muse, City of Petersburg
Leon Hughes, Prince George County
Scott Rae, Gloucester County
Matt Stafford, Caroline County
Joe Lerch, Chesapeake Bay Foundation

Call to Order

Mr. Davis called the meeting to order and asked for the calling of the roll. A quorum was declared present.

Consideration of the Minutes

MOTION: Mr. Froggatt moved that the minutes of the September 20, 2004 Board meeting be approved as submitted.

SECOND: Mr. Bulova.

DISCUSSION: None.

VOTE: Motion carried unanimously.

MOTION: Mr. Bulova moved that the minutes of the October 26, 2004 meeting of the Northern Area Review Committee be approved with the correction on page three, paragraph 3 changing "RMA" to "RPA."

SECOND: Mr. Davis.

DISCUSSION: None.

VOTE: Motion carried. Minutes were approved as amended.

MOTION: Ms. Roberts moved that the minutes of the October 26, 2005 meeting of the Southern Area Review Committee be approved as submitted.

SECOND: Ms. Harper.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Director's Report

Mr. Maroon welcomed members to Pocahontas State Park. He gave members a brief overview of the park and suggested that, as time permit they enjoy some of the park amenities.

Mr. Maroon noted that the Governor's budget announcement was scheduled for Friday, December 17. He noted that the Department is hoping for the reinstatement of local government grants and grants for Soil and Water Conservation Districts.

Mr. Maroon said that legislation would be introduced in the upcoming Session to formalize the merger of the Chesapeake Bay Local Assistance Department with the Department of Conservation and Recreation.

He noted that at the Virginia Association of Soil and Water Conservation Districts meeting in Roanoke there was considerable discussion about cost-share for urban BMP practices. This is similar in concept to the cost-share program for agricultural BMPs.

The six states within the Bay watershed participated in a nonpoint source summit. A list of potential actions will be forwarded to the Governor.

Consent Agenda

MOTION: Mr. Bulova moved that the Chesapeake Bay Local Assistance Board approve the following consent items as recommended by the respective staff reports:

Town of Clifton, Phase I Revisions
Town of Herndon, Phase I Revisions
Town of Tappahannock, Phase I Revisions
City of Suffolk, Review of Phase I Conditions
Town of Painter, Review of Phase II Conditions
Charles City County, Review of Phase II Conditions

SECOND: Ms. Roberts.

DISCUSSION: None.

VOTE: Motion carried unanimously.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD December 13, 2004

RESOLUTION

LOCAL PROGRAM, PHASE I TOWN OF CLIFTON - #81

Modification – Consistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1 (a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the Town of Clifton adopted a local Phase I program on July 5, 1995, and

WHEREAS on December 12, 1995, the Town's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

WHEREAS on December 10, 2001, the Chesapeake Bay Local Assistance Board adopted revisions to the Chesapeake Bay Preservation Area Designation and Management Regulations and set March 1, 2003 as the deadline for local governments to adopt revisions to their local ordinances; and

WHEREAS on February 18, 2003, the Chesapeake Bay Local Assistance Board extended the compliance deadline from March 1, 2003 to December 31, 2003, and

WHEREAS the Town of Clifton adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on December 2, 2003; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

WHEREAS staff reviewed the amendments made to the Town of Clifton's revised program for consistency with the Act and Regulations; and

WHEREAS on October 26, 2004 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the Town of Clifton's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that the Chesapeake Bay Local Assistance Board adopted this resolution in open session on December 13, 2004.

Joseph H. Maroon
Director
Department of Conservation and Recreation

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
December 13, 2004

RESOLUTION

LOCAL PROGRAM, PHASE I
TOWN OF HERNDON - #30

Modification – Consistent

WHEREAS §10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS §9 VAC 10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1 (a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the Town of Herndon adopted a local Phase I program on January 22, 1991, amending it in June and October of 1991; and

WHEREAS on June 25, 1993, the Town's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board; and

WHEREAS on December 10, 2001, the Chesapeake Bay Local Assistance Board adopted revisions to the Chesapeake Bay Preservation Area Designation and Management Regulations and set March 1, 2003 as the deadline for local governments to adopt revisions to their local ordinances; and

WHEREAS on February 18, 2003, the Chesapeake Bay Local Assistance Board extended the compliance deadline from March 1, 2003 to December 31, 2003; and

WHEREAS the Town of Herndon adopted a revised local program to comply with §§9 VAC10-20-60 1 and 2 of the Regulations on February 10, 2004; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

WHEREAS staff reviewed the amendments made to the Town of Herndon's revised program for consistency with the Act and Regulations; and

WHEREAS on October 26, 2004 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the Town of Herndon's revised Phase I program consistent with §10.1-2109 of the Act and §§9 VAC10-20-60 1 and 2 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that the Chesapeake Bay Local Assistance Board adopted this resolution in open session on December 13, 2004.

Joseph H. Maroon
Director
Department of Conservation and Recreation

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
December 13, 2004

RESOLUTION

LOCAL PROGRAM, PHASE I
TOWN OF TAPPAHANNOCK - # 14

Modification – Consistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1 (a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the Town of Tappahannock adopted a local Phase I program on October 28, 1991, and

WHEREAS on February 27, 1992, the Town's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

WHEREAS on December 10, 2001, the Chesapeake Bay Local Assistance Board adopted revisions to the Chesapeake Bay Preservation Area Designation and Management Regulations and set March 1, 2003 as the deadline for local governments to adopt revisions to their local ordinances; and

WHEREAS on February 18, 2003, the Chesapeake Bay Local Assistance Board extended the compliance deadline from March 1, 2003 to December 31, 2003, and

WHEREAS the Town of Tappahannock adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on February 10, 2003, with additional revision on September 9, 2004; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

WHEREAS staff reviewed the amendments made to the Town of Tappahannock's revised program for consistency with the Act and Regulations; and

WHEREAS on October 26, 2004 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the Town of Tappahannock's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on December 13, 2004 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

December 13, 2004

RESOLUTION

LOCAL PROGRAM, PHASE I

CITY OF SUFFOLK - #51

Modification – Consistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the City of Suffolk adopted a local Phase I program on September 19, 1990, and

WHEREAS on June 4, 1992, the City's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

WHEREAS on December 10, 2001, the Chesapeake Bay Local Assistance Board adopted revisions to the Chesapeake Bay Preservation Area Designation and Management Regulations and set March 1, 2003 as the deadline for local governments to adopt revisions to their local ordinances; and

WHEREAS on February 18, 2003, the Chesapeake Bay Local Assistance Board extended the compliance deadline from March 1, 2003 to December 31, 2003, and

WHEREAS the City of Suffolk adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on November 19, 2003; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

WHEREAS on March 22, 2004, the Chesapeake Bay Local Assistance Board found the City of Suffolk's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations provided the City adequately address six conditions by September 30, 2004; and

WHEREAS the City of Suffolk amended its local program on August 18, 2004 to comply with the Board's March 22, 2004 resolution; and

WHEREAS staff reviewed the amendments made to the City of Suffolk's revised program for consistency with the Act and Regulations; and

WHEREAS on October 26, 2004 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the City of Suffolk's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on December 13, 2004 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
December 13, 2004**

RESOLUTION

**LOCAL PROGRAM - PHASE II
TOWN OF PAINTER - # 57**

Determination of Consistency - Consistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall incorporate protection of the quality of state waters into each locality's comprehensive plan; and

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the element in subsection 3 shall be adopted by local governments; and

WHEREAS § 10.1-2103.10 of the Chesapeake Bay Preservation Act authorizes the Board to take administrative and legal actions to ensure compliance by counties, cities, and towns with the provisions of the Act; and

WHEREAS the Town of Painter adopted a Comprehensive Plan in 1998; and

WHEREAS on June 18, 1998 the Chesapeake Bay Local Assistance Board found the Town of Painter's plan consistent with one recommendation for consistency that was to be addressed by the Town and set a compliance date of June 30, 2003; and

WHEREAS the Town Council for the Town of Painter adopted a comprehensive plan on July 22, 2002; and

WHEREAS staff has reviewed Town of Painter's comprehensive plan for consistency with the previous consistency recommendations and the Act and Regulations; and

WHEREAS on October 26, 2004 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendations in the staff report and of the Review Committee; now

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the Town of Painter's comprehensive plan consistent with § 10.1-2109 of the Act and § 9VAC10-20-60 3 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that the Chesapeake Bay Local Assistance Board adopted this resolution in open session on December 13, 2004.

Joseph H. Maroon
Director
Department of Conservation and Recreation

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
December 13, 2004

RESOLUTION

LOCAL PROGRAM - PHASE II
CHARLES CITY COUNTY - # 21

Determination of Consistency - Consistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall incorporate protection of the quality of state waters into each locality's comprehensive plan; and

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the element in subsection 3 shall be adopted by local governments; and

WHEREAS § 10.1-2103 10 of the Chesapeake Bay Preservation Act authorizes the Board to take administrative and legal actions to ensure compliance by counties, cities, and towns with the provisions of the Act; and

WHEREAS Charles City County adopted a Comprehensive Plan in 1998; and

WHEREAS on November 10, 1998 the Chesapeake Bay Local Assistance Board found Charles City County's plan consistent with two recommendations for consistency that were to be addressed by the County and set a compliance date of July 1, 2003; and

WHEREAS the Board of Supervisors for Charles City County adopted a comprehensive plan on September 23, 2003; and

WHEREAS staff has reviewed Charles City County's comprehensive plan for consistency with the previous consistency recommendations and the Act and Regulations; and

WHEREAS on October 26, 2004 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendations in the staff report and of the Review Committee; now

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds Charles City County's comprehensive plan consistent with § 10.1-2109 of the Act and § 9VAC10-20-60 3 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that the Chesapeake Bay Local Assistance Board adopted this resolution in open session on December 13, 2004.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Local Program Reviews – Phase I

Ms. Heather Mackey presented the following report for the City of Alexandria.

The City of Alexandria adopted its Phase I program in December 1992. The Board found the City's program consistent in August 1993. While considering the required amendments to their ordinance, the City decided to evaluate the entire stream network through an identification and mapping project. This project was completed in November 2003. Department staff provided comments on proposed ordinance revisions several times between January 2003 and April 2004. Alexandria's City Council adopted a final revised Bay Act ordinance on June 12, 2004.

The stream assessment study that delayed ordinance adoption actually resulted in an increase in RPA for the City as well as the identification of nine intermittent stream segments protected with a 50-foot buffer under the general performance criteria. The City has a jurisdiction-wide RMA and has not designated any IDAs. The City's adopted ordinance addresses most of the required changes including revisions to definitions, RPA designation language, the site-specific RPA delineation requirements, and the requirement for a formal process for all RPA exceptions through the Planning Commissions; however, there is one recommendation for consistency.

Within the City's ordinance, Section 13-118, Non-complying land uses and structures, subsection (B) vests those proposed land uses or structures for which an applicant has filed a complete application for a preliminary site plan, subdivision plan, etc. prior to February 23, 2004. The policy states that those vested land uses or structures may be constructed in accordance with the original ordinance, except that they shall comply with any new requirements to the maximum extent practicable. The Department has consistently advised local governments that in order to be fully compliant with the Code of Virginia with regard to the vesting of development rights, the language needs to refer to approval of a site plan, building permit, etc., rather than the "filing of a complete application" as the Alexandria code language is currently written. Therefore, the City must amend the ordinance language accordingly.

At their October meeting, the Northern Area Review Committee recommended that the Alexandria Bay Act ordinance be found consistent provided the City undertake and complete the recommendation identified in the staff report by December 31, 2005.

Ms. Mackey noted that no one was present from the City of Alexandria.

Mr. Bulova noted that he would abstain from voting on the Alexandria review.

MOTION: Ms. Roberts moved that the Chesapeake Bay Local Assistance Board find the City of Alexandria's Phase I program to be consistent with § 10.1-2109 of the Act and § 9 VAC 10-20-60 1 and 2 of the Regulations subject to the condition that the City undertake and complete the one (1) recommendation contained in the staff report prior to December 1, 2005.

SECOND: Ms. Harper.

DISCUSSION: None.

VOTE: Motion carried unanimously.

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
December 13, 2004**

RESOLUTION

**LOCAL PROGRAM, PHASE I
CITY OF ALEXANDRIA - #59**

Modification – Conditional

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the City of Alexandria adopted a local Phase I program on December 12, 1992, and

WHEREAS on August 19, 1993, the City's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

WHEREAS on December 10, 2001, the Chesapeake Bay Local Assistance Board adopted revisions to the Chesapeake Bay Preservation Area Designation and Management Regulations and set March 1, 2003 as the deadline for local governments to adopt revisions to their local ordinances; and

WHEREAS on February 18, 2003, the Chesapeake Bay Local Assistance Board extended the compliance deadline from March 1, 2003 to December 31, 2003, and

WHEREAS on March 22, 2004 the Board adopted a resolution granting the City of Alexandria an extension of their Phase I local program modification deadline to June 30, 2004; and

WHEREAS the City of Alexandria adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on June 12, 2004; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

WHEREAS staff reviewed the amendments made to the City of Alexandria's revised program for consistency with the Act and Regulations; and

WHEREAS on October 26, 2004 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the City of Alexandria's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations subject to the following condition that the City undertake and complete the following recommendation no later than December 31, 2005:

1. For consistency with Code of Virginia (§15.2-2307), revise Section 13-118(B) as follows: "Any proposed land use or structure for which an applicant has ~~filed a complete application for a~~ an approved preliminary site plan, building permit..."

BE IT FINALLY RESOLVED that failure by the City of Alexandria to meet the above established compliance date of December 31, 2005 will result in the local program becoming inconsistent with § 10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations and subject the City of Alexandria to the compliance provisions as set forth in §10.1-2103.10 of the Act and §9VAC10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that the Chesapeake Bay Local Assistance Board adopted this resolution in open session on December 13, 2004.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Mr. Jakob Helmboldt presented the following report for Prince George County. He noted that Leon Hughes, Director of Planning for Prince George County was in attendance.

Mr. Helmboldt said that he had spoken with the County Attorney to discuss making the required changes to the ordinance. Mr. Hughes provided a section of the County Code that contains the septic requirements and as a result that recommendation was struck from the resolution.

Prince George County first adopted a local program on November 19, 1991.

Prince George County adopted local program amendments on August 10, 2004. The County's original Phase I program was contained in several separate ordinances within the County Code. The most recent revisions were incorporated into a stand-alone ordinance and in so doing several significant changes required for consistency were omitted. As a result, staff has six (6) recommendations for consistency. During the discussion last Tuesday the County indicated that they had no problem with any of the changes that needed to be made and that they intended to make those changes. Mr. Hughes indicated that the County intended to send the changes to MuniCode that afternoon for codification and that they would go before the Board of Supervisors in a month or two from now for adoption of the changes.

The County deleted language that designates a minimum Resource Management Area (RMA) of 150 feet in width in their revised ordinance. However, it is contained in another section of the County Code but is not referenced in their revised ordinance. The County has said they intend to repeal the other code references for this purpose.

The first recommendation requires that the County amend their RMA Designation, to define the RMA as having a 150-foot minimum width adjacent to any RPA as defined in the County's previous ordinance and to strike the section or properly reference other sections of the County Code so that they are consistent with one another.

The County's zoning ordinance retained language referring to aspects of their Bay Act program, including the description of the RPA. Language needs to be updated or stricken as it pertains to the revised perennality language that replaced tributary streams.

The County eliminated all but one reference to reduction of buffer widths in their revised ordinance. The County also intends to repeal any sections within other Code sections that retained buffer reduction language. To be consistent with the Regulations the County needs to amend the language that currently reads, "...may modify the width of the buffer area..." to read **"...may permit encroachments into the buffer area."**

As noted the recommendation pertaining to septic system requirements has been struck.

The County's Performance Standards need to be changed to require stormwater BMPs to be consistent with the water quality protection provisions of the Virginia Stormwater Management Regulations (4 VAC 3-20-10 et seq.).

The County's ordinance does not specify their original program adoption date when addressing the provision for existing nonconforming uses and structures. During the discussion, staff clarified the significance of this mistake, explaining that it could result in limiting the regulatory provisions that should apply to such sites under the revised regulations. The concern was that anything predating the most recent revisions adoption of August 10, 2004 would make virtually everything under the program a non-conforming use.

Most significant was the deletion of the development criteria for the RPA from the County's revised ordinance. Given that these provisions of the Regulations are central to the administration of the program and define the manner in which the RPA may be used, the County must include permitted development and all applicable conditions for permitted development within the RPA.

Staff recommends that Prince George County's revised Bay Act Ordinance be found inconsistent with the Act and Regulations as a result of the significance of the outstanding requirements for full consistency. It is staff's recommendation that the County be required to undertake and complete the six recommendations no later than June 30, 2005.

Mr. Davis called upon Mr. Hughes for comment.

Mr. Hughes said that the County hoped to address the issues concerned with the Board of Supervisors within the next two months.

MOTION: Ms. Roberts moved that the Chesapeake Bay Local Assistance Board find Prince George County's amended Phase I program inconsistent with § 10.1-2109 of the Act and § 9 VAC 10-20-60 1 and 2 of the Regulations and further that Prince George County undertake and complete the 6 recommendations contained in the revised staff report no later than June 30, 2005.

SECOND: Mr. Froggatt.

DISCUSSION: None.

VOTE: Motion carried unanimously.

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
December 13, 2004**

RESOLUTION

**LOCAL PROGRAM, PHASE I
PRINCE GEORGE COUNTY - #53**

Modification – Inconsistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS Prince George County adopted a local Phase I program on November 19, 1991, and

WHEREAS on June 22, 1995, Prince George County's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

WHEREAS on December 10, 2001, the Chesapeake Bay Local Assistance Board adopted revisions to the Chesapeake Bay Preservation Area Designation and Management Regulations and set March 1, 2003 as the deadline for local governments to adopt revisions to their local ordinances; and

WHEREAS on February 18, 2003, the Chesapeake Bay Local Assistance Board extended the compliance deadline from March 1, 2003 to December 31, 2003, and

WHEREAS Prince George County adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on August 10, 2004; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

WHEREAS staff reviewed the amendments made to Prince George County's revised program for consistency with the Act and Regulations; and

WHEREAS on October 26, 2004 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds Prince George County's revised Phase I program inconsistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations and further requires that Prince George County undertake and complete the 6 recommendations contained in the staff report no later than June 30, 2005.

1. For consistency with § 9 VAC 10-20-90 of the Regulations, amend § 17-534.A(2), RMA Designation, to define the RMA as having a 150-foot minimum width adjacent to any RPA as defined in the County's previous ordinance and reconcile the disparity with §17-440 of the Prince George County code.

2. For consistency with § 9 VAC 10-20-80 of the Regulations, amend § 17-430 of the County's Zoning ordinance to reconcile with § 17-534.A(1) of the County's Bay Act ordinance.
3. For consistency with § 9 VAC 10-20-130.4 of the Regulations, amend § 17-537.C(2)(a) by striking any language referring to the reduction of buffer widths. Amend the language that currently reads, "...may modify the width of the buffer area..." to read "**...may permit encroachments into the buffer area.**" Additionally, the County must modify §17-435 of the County's Zoning ordinance to reconcile with the revised requirements relating to buffer area requirements as currently outlined under §17-53.C of the County's Bay Act ordinance.
4. For consistency with § 9 VAC 10-20-120 8 of the Regulations, amend § 17-537.B(6) of the County's Performance Standards to require stormwater BMPs to be consistent with the water quality protection provisions of the Virginia Stormwater Management Regulations (4 VAC 3-20-10 et seq.).
5. For consistency with § 9 VAC 10-20-150 A 1 of the Regulations, amend § 17-540 by changing "*at the time of adoption*" to specify the County's original program adoption date of November 19, 1991 or any subsequent amendments as the date by which nonconformities are determined to have existed.
6. For consistency with § 9 VAC 10-20-130 1 of the Regulations, amend § 17-537, Performance Standards to include permitted development and all applicable conditions for permitted development consistent with the Development Criteria for Resource Protection Areas as outlined in the Regulations. The County's Zoning ordinance §17-431 must also be amended to reconcile with the revised Regulations pertaining to development criteria within the RPA.

BE IT FINALLY RESOLVED that failure by Prince George County to meet the above established compliance date of June 30, 2005 will result in the local program becoming inconsistent with § 10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations and subject Prince George County to the compliance provisions as set forth in §10.1-2103 10 of the Act and § 9VAC10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on December 13, 2004 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Mr. Helmboldt presented the following report for the City of Petersburg. He recognized Mr. Leonard Muse, Petersburg's Director of Planning.

The City's Phase I ordinance was first adopted by the City Council on September 19, 1990 which was found consistent on March 25, 1993.

The City of Petersburg adopted local program amendments on June 15, 2004. The City failed to make several significant changes required for consistency with the Regulations, and as a result staff has eight (8) conditions for consistency.

On October 28, staff met with Mr. Muse to discuss and clarify some of the recommendations. For consistency with the Regulations, the City must amend their General Performance Standards to require stormwater BMPs to be consistent with the water quality protection provisions of the Virginia Stormwater Management Regulations.

The City's revised ordinance does not include required changes to the provisions for agricultural lands as required by the General Performance Criteria of the Regulations. The revised Regulations require a conservation assessment, that where necessary, results in a conservation plan for agricultural activities, not a conservation plan as is currently required.

The City's stormwater management requirements retained references to the Local Assistance Manual, Virginia Erosion & Sediment Control Handbook and the VDOT Drainage Manual as the source for engineering calculations. The Virginia Stormwater Management Handbook should be the sole reference in order to ensure that engineering calculations are consistent with water quality protection provisions of the Virginia Stormwater Management Regulations.

The City failed to include in their adopted ordinance the conditions for alignment, design and buffer encroachments pertaining to exemption of public roads from the development criteria.

For consistency with the Regulations, the City must amend their ordinance to include all exempt public utilities or facilities allowed under the Regulations as well as the requirement that they be owned and/or permitted by the City of Petersburg.

The City failed to make appropriate changes to its ordinance relating to administrative waivers for the expansion of nonconforming principal structures. The City did not include the requirement that granting of such waivers is conditioned upon making the five required findings that must be made when considering all such requests.

The City should also strike the words "...or additions..." from § 122-121(b)(1) to ensure that the expansion of any nonconforming structure conforms to the required findings.

Most significantly, the City of Petersburg's revised ordinance omitted the Required Conditions for development in the RPA. This has resulted in the omission of the types of development allowed in RPAs as well as all applicable conditions for the permitted development in the RPA. Given that these provisions of the Regulations are central to the proper administration of the City's Bay Act program and define the manner in which the RPA may be used, the City must amend their ordinance to be consistent with the Regulations.

Staff recommends that Petersburg's revised Bay Act Ordinance be found inconsistent with the Act and Regulations as a result of the significance of the outstanding requirements for full consistency. It is staff's recommendation that the City be required to undertake and complete the eight recommendations no later than June 30, 2005.

Mr. Davis recognized Mr. Muse for comment.

Mr. Muse said that the City acknowledged staff's concerns and would work toward a resolution within the specified time frame.

MOTION: Ms. Roberts moved that the Chesapeake Bay Local Assistance Board find that the City of Petersburg's amended Phase I program inconsistent with § 10.10-2109 of the Act and § 9 VAC 10-20-60 1 and 2 of the Regulations and further that the City undertake and complete the 8 recommendations contained in the staff report no later than June 30, 2005.

SECOND: Mr. Bulova.

DISCUSSION: None.

VOTE: Motion carried unanimously.

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
December 13, 2004**

RESOLUTION

**LOCAL PROGRAM, PHASE I
CITY OF PETERSBURG - #17**

Modification – Inconsistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the City of Petersburg adopted a local Phase I program on September 19, 1990, and

WHEREAS on March 25, 1993, the City of Petersburg's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

WHEREAS on December 10, 2001, the Chesapeake Bay Local Assistance Board adopted revisions to the Chesapeake Bay Preservation Area Designation and Management Regulations and set March 1, 2003 as the deadline for local governments to adopt revisions to their local ordinances; and

WHEREAS on February 18, 2003, the Chesapeake Bay Local Assistance Board extended the compliance deadline from March 1, 2003 to December 31, 2003, and

WHEREAS the City of Petersburg adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on June 15, 2004; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

WHEREAS staff reviewed the amendments made to the City of Petersburg's revised program for consistency with the Act and Regulations; and

WHEREAS on October 26, 2004 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the City of Petersburg's revised Phase I program inconsistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations and further requires that the City of Petersburg undertake and complete the eight (8) recommendations contained in the staff report no later than June 30, 2005.

1. For consistency with § 9 VAC 10-20-120 8 of the Regulations, amend § 122-77(g) of the City's General Performance Standards to require stormwater BMPs to be consistent with the water quality protection provisions of the Virginia Stormwater Management Regulations (4 VAC 3-20-10 et seq.).
2. For consistency with § 9 VAC 10-20-120 9 of the Regulations, amend § 122-77(i) to require a *conservation assessment, that where necessary, results in a conservation plan* for agricultural activities, not simply to automatically require a *conservation plan to be developed* as was required in the original regulations.
3. Amend § 122-100(3) to strike the reference to the Local Assistance Manual, Virginia Erosion & Sediment Control Handbook and the VDOT Drainage Manual as the source

for engineering calculations and replace them with a reference to the Virginia Stormwater Management Handbook.

4. For consistency with § 9 VAC 10-20-150 B 1 a of the Regulations, amend § 122-122(a)(1) by requiring that exempted roads meet the provisions for alignment, design and minimizing encroachment into the RPA.
5. For consistency with § 9 VAC 10-20-150 B 2 of the Regulations, amend § 122-122(a)(2) by including the requirement that they be owned and/or permitted by the City of Petersburg.
6. For consistency with § 9 VAC 10-20-150 C 4 of the Regulations, amend § 122-121(b)(4) to include a process for administrative waivers for the expansion of nonconforming principal structures, including the five required findings that must be made when considering all such requests.
7. The City should strike the words “...or additions...” from § 122-121(b)(1) to ensure that the expansion of any nonconforming structure conforms to the requirements of § 9 VAC 10-20-150 C 4.
8. For consistency with § 9 VAC 10-20-130 1 of the Regulations, reinsert § 122-54 Required Conditions to include permitted development and all applicable conditions for permitted development as outlined in the Regulations.

BE IT FINALLY RESOLVED that failure by the City of Petersburg to meet the above established compliance date of June 30, 2005 will result in the local program becoming subject to the compliance provisions as set forth in §10.1-2103 10 of the Act and §9VAC10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on December 13, 2004 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Mr. Ryan Link presented the following update for the City of Norfolk. He recognized Mr. Lee Rosenberg and Mr. Brian Ballard representing the City.

The City adopted its original Phase I program on August 28, 1990.

After addressing conditions and adopting several amendments the City's program was found consistent on March 27, 1997.

In response to the revised Regulations the City provided the Department with a draft copy of their revised program on December 15, 2003, with the stipulation that language would most likely change based on the findings of the IDA Ad Hoc committee. During the March meeting the Board deferred discussion of the City's program and the fact that they had not adopted, based on the fact that IDA discussions were still ongoing.

Staff continued to work with the City on their ordinance revisions. The Department reviewed the City's draft revisions and provided written correspondence addressing our comments on May 18, 2004. The City responded to these comments via correspondence. In order to more fully address the concerns of the Department, staff met with the City on May 27, 2004. Many of the misunderstandings were cleared up, however, several required changes still needed to be made to the City's ordinance at that time. Since the meeting between Department and the City in May 2004 the Department has reviewed several additional drafts of the City's ordinance. Most recently the Department provided written comments to the City last week.

During this time period, the Department determined that the best way to move forward with the Residential IDA concept would be through a regulatory change. Therefore, it was decided by the Policy Committee that this issue would be examined during the upcoming regulatory revision process. The committee decided to work one-on-one with localities in the interim for those interested in pursuing IDA designations.

As a result of the timing of the above outlined events, the City of Norfolk has not been formally brought in front of the Board regarding their ordinance revisions, thus, the City has had six additional months to address the concerns of the Department and to adopt their revised ordinance. However, as of this date the City has not adopted an ordinance that includes the revised Regulations, thus, the Department has no formal ordinance to comment on.

Based on the above summary of events, and based on the fact that the required Regulation revisions that are to be adopted are not required to include IDA changes, staff recommends the City of Norfolk be found inconsistent with the Act and Regulations.

The SARC Concurred with this recommendation.

Mr. Davis called on Mr. Rosenberg for comment.

Mr. Rosenberg thanked the Board for their patience. He indicated that the City had been without a planner and that Mr. Ballard had recently filled that position.

Mr. Davis asked if the March 31, 2005 date would be a problem.

Mr. Rosenberg did not believe it would be a problem.

Mr. Davis noted that the next meeting would be prior to the March 31 date and suggested an interim report from the City at that time.

Ms. Shawn Smith noted that this finding was due to the fact that the City had not adopted a program, not that the program itself was inconsistent. She suggested a date of March 15, 2005 would allow the Board to determine if a program had been adopted and that said program could be reviewed in the May-June timeframe. She said that if a program is adopted prior to March 15, the Board would not make a finding of inconsistency.

MOTION: Ms. Roberts moved that the Chesapeake Bay Local Assistance Board find the City of Norfolk's Phase I program inconsistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations and further that the City must adopt a revised Phase I program no later than March 15, 2005.

SECOND: Ms. Harper.

DISCUSSION: None.

VOTE: Motion carried unanimously.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

December 13, 2004

RESOLUTION

LOCAL PROGRAM, PHASE I **CITY OF NORFOLK - # 10**

Determination of Consistency– Inconsistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the City of Norfolk adopted a local Phase I program on August 28, 1990 and an amendment on March 3, 1992, and

WHEREAS on September 16, 2002, the City's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

WHEREAS on December 10, 2001, the Chesapeake Bay Local Assistance Board adopted revisions to the Chesapeake Bay Preservation Area Designation and Management Regulations and set March 1, 2003 as the deadline for local governments to adopt revisions to their local ordinances; and

WHEREAS on February 18, 2003, the Chesapeake Bay Local Assistance Board extended the compliance deadline from March 1, 2003 to December 31, 2003, and

WHEREAS staff provided technical assistance to the City of Norfolk to help facilitate the adoption of a revised program for consistency with the Act and Regulations; and

WHEREAS the City of Norfolk has provided a schedule that the City will adopt a revised local program to comply with § 9VAC10-20-60 1 and 2 of the Regulations on January 25, 2005; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of local programs; now

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the City of Norfolk's Phase I program inconsistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations and further that the City must adopt a revised Phase I program no later than March 15, 2005.

BE IT FINALLY RESOLVED that failure by the City of Norfolk to meet the above established compliance date of March 15, 2005 will result in the local program becoming subject to the compliance provisions as set forth in §10.1-2103 10 of the Act and §9VAC10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on December 13, 2004 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Local Program Reviews – Phase II

There were no Phase II Local Program Reviews.

Local Program Reviews – Compliance Evaluation

Ms. Nancy Miller presented the report for Gloucester County. She recognized Mr. Scott Rae, Environmental Programs Administrator for Gloucester County.

The Department initiated the compliance evaluation process in Gloucester County on March 4, 2003, and on September 15, 2003 the Board found the County not fully in compliance and set a deadline of September 30, 2004 for the County to address the five recommendations in the staff report. On May 25, 2004 the Department initiated follow-up activities and met with County staff on September 1, 2004 to review changes implemented by the County to address the recommendations.

The original staff report included five recommendations that the County needed to address: document submission of WQIAs for proposed activities within RPAs; review all proposed subdivisions for compliance with CBPA requirements; keep complete files on RPA exception and administrative waiver requests; develop and implement a 5-year pump-out notification and enforcement program; and, complete the development of a BMP database.

In the twelve months after the Board's initial review, the County responded to the five recommendations, addressing all but the final elements of the septic pump-out notice and tracking system. Progress on this item has been good and the County has demonstrated a commitment to completing the task through a significant investment of staff time and funds.

The County's activities include: septic pump-out tracking forms are now included in the County's database, and as of September 1, 2004 County staff had created 13,949 such files; the County will soon be able to generate a mailing list, after eliminating properties that do not need pump-out such as the 5,000 properties served by the central sewage treatment system; the County budget includes funds for mailing the required notices, and the County is exploring operation of the pump-out notice and tracking system as a cooperative effort between the County and the local health department office; and, the County has also added the septic system inspection alternative (in lieu of pump-out) to their CBPA Ordinance.

While the County made significant progress on all the recommendations, it must complete the work required to fully meet the recommendation regarding the septic pump-out requirement. So the Condition Review Staff Report only includes one recommendation:

"The County must complete the development and implementation of a 5-year pump-out notification and enforcement program by June 30, 2005 for compliance with Section 9VAC 10-20-120.7."

The County's accomplishments are especially noteworthy given the extended impacts of Hurricane Isabel and a three-month vacancy in a key staff position. Department staff has continued to work closely with County staff to address the remaining compliance item in the report.

The Northern Area Review Committee recommends that the Chesapeake Bay Local Assistance Board find the County's Phase I program not fully compliant, and direct the County to complete the recommendation in this staff report no later than June 30, 2005.

MOTION: Mr. Bulova moved that the Chesapeake Bay Local Assistance Board find that certain aspects of Gloucester County's Phase I program implementation do not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations, and further that Gloucester County undertake and complete the recommendation in the staff report no later than June 30, 2005.

SECOND: Mr. Froggatt.

DISCUSSION: None.

VOTE: Motion carried unanimously.

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
December 13, 2004**

RESOLUTION

**LOCAL PROGRAM COMPLIANCE EVALUATION
GLOUCESTER COUNTY - #38**

Local Compliance Evaluation - Conditional

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS §9VAC 10-20-250 1 b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on September 16, 2002 for the purposes of reviewing local Bay Act compliance; and

WHEREAS on September 15, 2003, the Chesapeake Bay Local Assistance Board found that certain aspects of Gloucester County's Phase I program did not fully comply with the Act and Regulations and further that the County address the five recommendations in the staff report no later than September 30, 2004; and

WHEREAS in September of 2004, the County provided staff with information relating to the County's actions to address the five recommendations and Department staff prepared a staff report; and

WHEREAS on October 26, 2004 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the compliance evaluation staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds that the implementation of certain aspects of Gloucester County's Phase I program do not fully comply with §§10.1-2109 and 2111 of the Act and §§9 VAC 10-20-231 and 250 of the Regulations, and in order to correct these deficiencies, directs Gloucester County to undertake and complete the recommendation no later than June 30, 2005.

1. The County must complete the development and implementation of a 5-year pump-out notification and enforcement program by June 30, 2005 for compliance with Section 9VAC 10-20-120 7.

BE IT FINALLY RESOLVED that failure by Gloucester County to meet the above established compliance date of June 30, 2005 will result in the local program becoming noncompliant with §§10.1-2109 and 2111 of the Act and §§9 VAC 10-20-231 and 250 of the Regulations and subject Gloucester County to the compliance provisions as set forth in §10.1-2103 10 of the Act and §9VAC10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on December 13, 2004 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Ms. Shawn Smith presented the following report for Caroline County. She recognized Mr. Matt Stafford, Planning Director for the County.

The compliance evaluation process for Caroline County was begun late last year. Three meetings to complete the checklists, file and site reviews were held in December and January, (*December 11, 2003, January 8, 2004 and January 12, 2004*). The delay in completing the review is due to staff departure and the need to gather some additional information.

The report summarizes the findings of the compliance evaluation, and notes that, in general, the County is enforcing the requirements of its Bay Act program in an appropriate manner. General development activities in the County are mostly focused on residential development. Site plan reviews and field visits included a large master planned subdivision, a shoreline erosion control

project and a sports complex. The County's amended Bay Act program was found consistent by the Board at the March meeting.

Based on the compliance evaluation process, the Department has six recommendations for full compliance, one relating to development of an organized BMP tracking and maintenance program; and another to consistent implementation and enforcement of the septic pump-out requirement as the County has not been proactive about tracking and maintaining required BMPs and septic pump-outs. The County has a tracking system for BMPs, but needs to ensure that it is kept up to date and that required maintenance is performed on existing BMPs.

Two other recommendations relate to stormwater management BMPs; one to ensure that all BMP designs, siting criteria and removal efficiencies comply with the standards in the Virginia Stormwater Management Handbook, and the other for the County to prohibit the use of natural wetlands as locations for BMPs and to discontinue allowing for further pollutant removal credits for use of natural wetlands as BMPs.

One other relates to ensuring that all site plats show the site-specific RPA limits and never show reductions in the site-specific RPA buffer limits, even when permitted encroachments are present.

The last one relates to documentation that WQIAs are submitted and approved for any proposed land disturbance, development or redevelopment in RPAs. The County has generally required site plans with WQIA elements for the larger scale developments, but does not appear to specifically require WQIAs for smaller projects in the RPA. Department staff will work with the County to develop WQIAs for smaller scale projects to address this recommendation.

All recommendations for full compliance are to be addressed no later than December 31, 2005 and the County has indicated its willingness to address them. The Northern Area Review Committee concurred with staff's recommendation at their October 26, 2004 meeting.

MOTION: Mr. Froggatt moved that the Chesapeake Bay Local Assistance Board find that certain aspects of Caroline County's implementation of its Phase I Program do not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations and further that Caroline County undertake and complete the six recommendations contained in the staff report no later than December 30, 2005 with an interim report provided to the Board by June 1, 2005.

SECOND: Mr. Bulova.

DISCUSSION: None.

VOTE: Motion carried unanimously.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
December 13, 2004

RESOLUTION

LOCAL PROGRAM COMPLIANCE EVALUATION
CAROLINE COUNTY - #62

Local Compliance Evaluation - Conditional

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS § 9VAC 10-20-250 1 b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on September 16, 2002 for the purposes of reviewing local Bay Act compliance; and

WHEREAS in 2004, the DCR Division of Chesapeake Bay Local Assistance, formerly the Chesapeake Bay Local Assistance Department, conducted a compliance evaluation of Caroline County's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on October 26, 2004 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the compliance evaluation staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds that the implementation of certain aspects of Caroline County's Phase I program do not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations, and in order to correct these deficiencies, directs Caroline County to undertake and complete six recommendations contained in this staff report no later than December 31, 2005.

1. As required by Sections 17.10.B and 17.11 of the County's Overlay District, the County must document submission of a WQIA for any proposed land disturbance, development or redevelopment within RPAs, and for development in RMAs when required by the Director.
2. The County must implement its 5-year pump-out notification, enforcement and tracking program for compliance with § 9VAC 10-20-120 7 a of the Regulations and Section 17.9.B.7 of Caroline County's Chesapeake Bay Preservation Area Overlay District.

3. To fully comply with § 9 VAC 10-20-120 3 of the Regulations, the County will develop a program to ensure the regular or periodic maintenance and tracking of best management practices (BMPs) in order to ensure their continued proper functioning over the long-term.
4. For compliance with § 9 VAC 10-20-80 and §9 VAC 10-20-105, the County must ensure that all site plats show the site-specific RPA limits as delineated by the County's CBPA ordinance and in no cases shall reductions be shown to the site-specific RPA.
5. The County must ensure that all BMP designs, siting requirements, and allowable pollutant removal efficiencies are in accordance with those prescribed in the Minimum Standards of the Virginia Stormwater Management Handbook (VSWMH).
6. The County should prohibit the use of natural wetlands as locations for BMPs and should discontinue approving further pollution credits for using these areas. All in stream stormwater management facilities must meet the criteria established in § 9VAC 10-20-120 8 and § 9VAC 10-20-130 3.a.

BE IT FINALLY RESOLVED that failure by Caroline County to meet the above established compliance date of December 31, 2005 will result in the local program becoming noncompliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations and subject Caroline County to the compliance provisions as set forth in § 10.1-2103 10 of the Act and § 9VAC10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on December 13, 2004 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Ms. Smith presented the following report for the Town of Cape Charles. She noted that no one was present from the Town.

The initial compliance evaluation for the Town of Cape Charles was completed on September 15, 2003. There were two recommendations for full compliance that the Town was to address by September 30, 2004. The recommendations were as follows: the town should develop a database or other method of tracking BMPS installation and maintenance, and the Town must implement its septic pump-out program. In August of 2004, staff received information from the town relating to two recommendations.

The Town planner sent out notices and agreements to the three BMP owners in the Town for the maintenance. The town also provided a BMP inspection schedule to ensure maintenance is performed. The town has 12 existing septic systems, and sent out notices to these system owners notifying them of the required pump-out. The town notes that if an owner does not pump a system out, the town will have it pumped out and charge the owner.

Based on the information provided by the Town, it is staff's opinion that the two conditions have been met and the Town's program be found fully compliant. The Southern Area Review Committee concurred with staff's recommendation at its October 26, 2004 meeting.

MOTION: Ms. Harper moved that the Chesapeake Bay Local Assistance Board find the Town of Cape Charles' Phase I program compliant with § 10.1-2109 and 2111 of the Act and § VAC 10-20-231 and 250 of the Regulations.

SECOND: Mr. Froggatt.

DISCUSSION: None.

VOTE: Motion carried unanimously.

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
December 13, 2004**

RESOLUTION

**LOCAL PROGRAM COMPLIANCE EVALUATION
TOWN OF CAPE CHARLES - #14**

Local Compliance Evaluation - Compliant

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS §9VAC 10-20-250 1 b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on September 16, 2002 for the purposes of reviewing local Bay Act compliance; and

WHEREAS on September 15, 2003, the Chesapeake Bay Local Assistance Board found that certain aspects of the Town of Cape Charles' Phase I program did not fully comply with the Act and Regulations and further that the Town address the two recommendations in the staff report no later than September 30, 2004; and

WHEREAS in August of 2004, the Town provided staff with information relating to the Town's actions to address the two recommendations and staff prepared a staff report confirming this; and

WHEREAS on October 26, 2004 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the compliance evaluation staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds that the Town of Cape Charles has addressed the previously noted implementation deficiencies and is in compliance with §§10.1-2109 and 2111 of the Act and §§9 VAC 10-20-231 and 250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on December 13, 2004 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Mr. Link presented the following report for the Town of Windsor. He noted that no one from the Town was present.

Prior to August 2003 Isle of Wight County administered the Town's CBPA program. Since that time Jay Randolph took the position of Zoning Administrator and is administrator for the Town's CBPA program. The County still oversees the Town's E&S Control program.

Given the fact that the Town is in a time of transition they have done an admirable job in addressing the revisions to their ordinance. There are however, three recommendations that must be addressed in order for them to be fully consistent, these are:

The Town must develop a process to ensure regular maintenance of BMPs

The Town must establish a process that ensures WQIAs are submitted for all required projects.

The Town must ensure that all required notations are included on submitted site plans.

Based on the above, staff recommended to the SARC that certain aspects of the Town's implementation of their Phase I program do not fully comply with the Act and Regulations, and

the Town address the three (3) recommendations contained in the report no later than December 31, 2005.

The Town has notified the Department that they have no problem with addressing the recommendations by the compliance date. The SARC concurred with this recommendation

MOTION: Ms. Roberts moved that the Chesapeake Bay Local Assistance Board find that certain aspects of the Town of Windsor's implementation of its Phase I Program do not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations and further that the Town undertake and complete the three recommendations contained in the report no later than December 31, 2005.

SECOND: Mr. Bulova.

DISCUSSION: None.

VOTE: Motion carried unanimously.

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
December 13, 2004**

RESOLUTION

**LOCAL PROGRAM COMPLIANCE EVALUATION
TOWN OF WINDSOR - #67**

Local Compliance Evaluation - Conditional

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS §9VAC 10-20-250 1 b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on September 16, 2002 for the purposes of reviewing local Bay Act compliance; and

WHEREAS in February 2004, the DCR Division of Chesapeake Bay Local Assistance, formerly the Chesapeake Bay Local Assistance Department, conducted a compliance evaluation of the Town of Windsor's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on October 26, 2004 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the compliance evaluation staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds that the implementation of certain aspects of Town of Windsor's Phase I program do not fully comply with §§10.1-2109 and 2111 of the Act and §§9 VAC 10-20-231 and 250 of the Regulations, and in order to correct these deficiencies, directs the Town of Windsor to undertake and complete the three (3) recommendations contained in the staff report no later than December 31, 2005.

1. The Town should develop a program in compliance with § 9VAC 10-20-120 3 of the Regulations to ensure the regular or periodic maintenance of best management practices in order to ensure their continued proper functioning over the long-term. Such a program should include the development of a BMP maintenance plan or the development of a BMP database to track type, installation date, location, inspections and maintenance.
2. As required under Section 106.B of the Town's ordinance, the Town must demonstrate that a process is in place that ensures that all required WQIAs are submitted.
3. For compliance with § 9 VAC 10-20-191, the Town must ensure that all required notations are included on all site plans prior to their approval.

BE IT FINALLY RESOLVED that failure by the Town of Windsor to meet the above established compliance dates of December 31, 2005 will result in the local program becoming noncompliant with §§10.1-2109 and 2111 of the Act and §§9 VAC 10-20-231 and 250 of the Regulations and subject the Town of Windsor to the compliance provisions as set forth in §10.1-2103 10 of the Act and §9VAC10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that the Chesapeake Bay Local Assistance Board adopted this resolution in open session on December 13, 2004.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Director's Update Regarding Inconsistent Local Programs

Mr. Maroon gave the following updates.

Town of Onley – Correspondence has gone back and forth between the Town and the Office of the Attorney General.

Mr. Chaffe indicated that he had sent a letter to the Town Attorney. He was expecting a response soon.

Chesterfield County – The County did adopt their program before the meeting. Mr. Chaffe said he had contacted the County to suggest that they drop their lawsuit, since the issue is now moot.

City of Richmond – Mr. Maroon stated that the City of Richmond was on track to adopt. Mr. Helmboldt made the following comments.

Since the City created a stand-alone ordinance, they had to modify a total of four ordinances, including their Zoning ordinance, since they were removing their program from that section of the City Code. The City's Legal Department failed to specify the effective date of December 31, 2004, as they had with the other three ordinances, but instead had an "upon adoption" clause which would have technically meant that the City had no program for the approximately six weeks between adoption date and the effective date of the changes to the other ordinances.

Consequently, readoption with these corrections is on the consent agenda for the City Council's December 13, 2004 meeting, so there should be nothing else to hold it up at this point, and there were no objections or concerns besides this technicality.

Lancaster County – Correspondence has also gone back and forth between the County Attorney and the Attorney General's office. There have also been further staff-to-staff communications. Ms. Little noted that Lancaster was no longer willing to make any of the changes, including the ones they had previously agreed to make.

Mr. Crafton noted that the Town of White Stone has also adopted but left out the same issues that the County has omitted. This will require additional follow up.

Review of Board Sponsored Activities

Mr. Davis said that the Retreat was very productive. Consensus was that the Board attempt to hold one or two retreats on an annual basis.

New Business

Election of Officers

Mr. Maroon noted that the current bylaws called for the election of a Chairman and a Vice Chairman at the last meeting of the calendar year.

Mr. Bulova nominated Mr. Davis to serve as Chairman. Ms. Harper seconded.

Mr. Bulova moved that nominations be closed. Mr. Froggatt seconded.

Mr. Davis was unanimously elected to serve as Chairman.

Ms. Roberts nominated Mr. Sheffield to serve as Vice Chairman. Mr. Bulova seconded.

Mr. Bulova moved that nominations be closed. Mr. Froggatt seconded.

Mr. Sheffield was unanimously elected to serve as Vice Chairman.

Approval of 2005 Meeting Schedule

Upon request by Mr. Davis, the proposed meeting date for the May 2005 Northern and Southern Area Review Committee meetings was changed to May 3, 2005.

MOTION: Mr. Bulova moved that the Board tentatively adopt the following meeting schedule for 2005:

Southern Area Review Committee

Tuesday, February 15, 2005, 2:00 p.m.

Tuesday, May 3, 2005, 2:00 p.m.

Tuesday, August 9, 2005, 2:00 p.m.

Tuesday, October 25, 2005, 2:00 p.m.

Northern Area Review Committee

Tuesday, February 15, 2005, 10:00 a.m.

Tuesday, May 3, 2005, 10:00 a.m.

Tuesday, August 9, 2005, 10:00 a.m.

Tuesday, October 25, 2005, 10:00 a.m.

Chesapeake Bay Local Assistance Board

Monday, March 21, 2005, 10:00 a.m.

Monday, June 20, 2005, 10:00 a.m.

Monday, September 19, 2005, 10:00 a.m.

Monday, December 5, 2005, 10:00 a.m.

SECOND: Ms. Roberts.

DISCUSSION: Staff will confirm these dates with Board members prior to finalizing the schedule.

VOTE: Motion carried unanimously.

Bylaws

Mr. Maroon reviewed the proposed Bylaws revisions. He noted that the revisions had been presented to members at the Retreat.

MOTION: Mr. Froggatt moved that the proposed Bylaws revisions be accepted as submitted.

SECOND: Mr. Bulova.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Public Comment

There was no public comment.

There being no further business, Mr. Bulova moved that the meeting be adjourned.